IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1577 of 2005

M/s.GKW Limited .. Petitioner

versus

The Regional Provident Fund

Commissioner & ors. .. Respondents

...

Mr.C.U.Singh with Khaitan Jaykar i/b M/s.Khaitan & Jaykar for the petitioner.

None for the respondents.

CORAM : D.G. KARNIK,J.

DATED : 22nd June 2005.

P.C.:

1. Rule. Learned counsel for the respondent nos.1 and 2 waives service. By consent, rule taken up for hearing forthwith.

2. Heard learned counsel for the petitioner and respondent nos.1 and 2. Respondent no.3 is formal party and no service is necessary.

3. By an order dated 14th October 2004 passed under section 7A of the Employees Provident Fund and Miscellaneous Provisions Act 1952 (for short 'the Act') it was held that the petitioner was liable to pay certain amounts by way of contribution. As the amounts were not paid, an order for attachment of the bank account of the petitioner was passed and accordingly, a sum of Rs.1.17 crores (approximately) has been attached and transmitted to the respondent nos.1 and 2.

4. Being aggrieved by the initial order dated 14th October 2004, the petitioner filed an appeal before the respondent no.3 Tribunal. By setting aside the impugned order, the Tribunal remanded the matter back for fresh hearing in accordance with law. However, instead of directing a refund of the amount which was attached in pursuance of the order for payment the Tribunal directed that the amount be retained by the respondent nos.1 and 2, till the

final disposal after remand. That part of the order is impugned in this Writ Petition.

5. Learned counsel for the petitioner submits that in view of the fact that the original order itself has been set aside, continuation of the attachment of its property in pursuance of the order which is non- existent now is illegal and Tribunal ought to have ordered refund of that amount. Learned counsel for the respondent nos.1 and 2 at this stage states that without going into the question of merits as to whether the said amount can be retained in view of the peculiar facts and circumstances of this case, the respondent nos.1 and 2 are willing to re-hear the appellant and pass fresh order u/s.7A within a period of two weeks. In the event the final order is in favour of the petitioner, they would forthwith refund the amount of Rs.1.17 crores which has been attached. However, if the order is ultimately against the petitioner, the respondent would have a right to retain the said amount to the extent to which the petitioner is held liable.

6. In view of the fact that the respondent nos.1 and 2 propose to decide the appeal within a period of

two weeks hereof, in my view, it would not be necessary to pass the order of refund forthwith. However, in the event the appeal is not decided within a period of two weeks for any reason whatsoever, the respondent nos.1 and 2 shall refund the amount of Rs.1.17 crores to the petitioner forthwith.

7. Hence, by consent of the parties, following order is passed :

(a). The petitioner shall appear before the respondent nos.1/2 on 23rd June 2005 at 11.00 a.m. The respondent nos.1 and 2 shall hear the petitioner and pass a fresh order u/s.7A of the Act in accordance with law within a period of two weeks. In the event the order is not passed within a period of two weeks for any reason, the respondent nos.1 and 2 shall refund to the petitioner the amount of Rs.1.17 crores which has been recovered by them under an attachment.

(b). All concerned to act on a copy of this order duly authenticated by the Associate.

D.G. KARNIK, J